



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2019-0321; FRL-10003-74-Region 9]**

#### **Air Plan Conditional Approval and Disapproval; Arizona; Maricopa County; Power**

#### **Plants, Fuel Burning Equipment, and Internal Combustion Engines**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to conditionally approve two revisions to the Maricopa County portion of the Arizona State Implementation Plan (SIP) concerning fuel-burning equipment and internal combustion engines. The EPA is also proposing to disapprove one revision to the Maricopa County portion of the Arizona SIP concerning power plants. We are proposing action on Maricopa County rules that regulate these emission sources under the Clean Air Act (CAA or the “Act”). We are taking comments on these proposals and plan to follow with final actions.

**DATES:** Any comments must arrive by **[Insert date 30 days after the date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0321 at <http://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gong, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3073 or by email at [gong.kevin@epa.gov](mailto:gong.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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## **I. The State's Submittal**

A. *What rules did the State submit?*

On June 22, 2017, the Arizona Department of Environmental Quality (ADEQ, or the “State”) electronically submitted a SIP revision from the Maricopa County Air Quality Department (MCAQD, or the “County”) revising several rules. Table 1 lists the rules on which the EPA is proposing action, with the dates they were revised by the MCAQD, the dates they were submitted by the ADEQ, and the type of action that the EPA is proposing in this notice.

TABLE 1 - SUBMITTED RULES

Rule #	Rule Title	Revised	Submitted	Proposed Action
322	Power Plant Operations	November 2, 2016	June 22, 2017	Disapproval
323	Fuel Burning Equipment from Industrial/Commercial/Institutional (ICI) Sources	November 2, 2016	June 22, 2017	Conditional Approval
324	Stationary Reciprocating Internal Combustion Engines (RICE)	November 2, 2016	June 22, 2017	Conditional Approval

On December 22, 2017, the submittal containing the rules listed in Table 1 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

*B. Are there other versions of these rules?*

We approved earlier versions of the rules listed in Table 1 into the SIP on October 14, 2009 (74 FR 52693, 40 CFR 52.120, paragraph (c), Table 4—EPA-Approved Maricopa County Air Pollution Control Regulations). The ADEQ previously submitted these rules in a SIP revision on December 19, 2016, along with the County’s reasonably available control technology (RACT) demonstration. However, this submittal did not include documentation that showed the entirety of the County’s SIP revision had met the public notice requirements required for completeness under 40 CFR part 51 Appendix V. The County addressed the public notice requirement and the State resubmitted the submittal on June 22, 2017, and withdrew the December 19, 2016 submittal on May 17, 2019.

*C. What is the purpose of the submitted rule revisions?*

Oxides of nitrogen (NO<sub>x</sub>) helps produce ground-level ozone, smog and particulate matter which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> emissions. The rules in Table 1 were submitted to control NO<sub>x</sub> emissions from power plants, process heaters, boilers, stationary turbines, and internal combustion engines. The EPA’s technical support documents (TSDs) have more information about these rules.

## **II. EPA’s Evaluation and Action**

*A. How is the EPA evaluating the rules?*

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in

nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require RACT for each major source of NO<sub>x</sub> in ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)). Maricopa County regulates a portion of the Phoenix-Mesa ozone nonattainment area, which is classified as Moderate for the 2008 8-hour ozone standard (40 CFR 81.303). Maricopa County's "Analysis of Reasonably Available Control Technology For The 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)," adopted December 5, 2016, submitted June 22, 2017 (the "2016 RACT SIP"), identified all of the major sources of NO<sub>x</sub> within the County's portion of the Phoenix-Mesa nonattainment area, and concluded that there were major sources within the Maricopa County portion of the Phoenix-Mesa nonattainment area subject to each of these rules. Accordingly, all three of the submitted rules must establish RACT levels of control for these major sources.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "Alternative Control Techniques Document – NO<sub>x</sub> Emissions from Stationary Gas Turbines," EPA 453/R-93-007, January 1993.

4. “Alternative Control Techniques Document – NO<sub>x</sub> Emissions from Industrial, Commercial & Institutional Boilers,” EPA 453/R-94-022, March 1994.
5. “Alternative Control Techniques Document – NO<sub>x</sub> Emissions from Stationary Reciprocating Internal Combustion Engines,” EPA 453/R-93-032, July 1993.
6. “De Minimis Values for NO<sub>x</sub> RACT,” Memorandum from G. T. Helms, Group Leader, Ozone Policy and Strategies Group, U.S. EPA, January 1, 1995.
7. “Cost-Effective Nitrogen Oxides (NO<sub>x</sub>) Reasonably Available Control Technology (RACT),” Memorandum from D. Ken Berry, Acting Director, Air Quality Management Division, US. EPA, March 16, 1994.

*B. Do the rules meet the evaluation criteria?*

Rules 322, 323 and 324 apply to various emission sources that are major sources of NO<sub>x</sub> in the Phoenix-Mesa area. We find that the County's submissions are largely consistent with the applicable CAA requirements, with the exceptions identified below. In a letter dated January 28, 2019 (the “commitment letter”), the County enumerated certain rule deficiencies and committed to revise those provisions in accordance with EPA guidance, and submit the revised rules within eleven months of a conditional approval.<sup>1</sup> On February 25, 2019, the ADEQ provided its own commitment to submit the County’s revised rules to the EPA within one month after the County’s action and request for SIP revision.<sup>2</sup> On December 5, 2019, the County provided a

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<sup>1</sup> Letter dated January 28, 2019, from Philip A. McNeely, Director, Maricopa County Air Control Quality Department, to Misael Cabrera, Director, Arizona Department of Environmental Quality.

<sup>2</sup> Letter dated February 25, 2019, from Timothy S. Franquist, Director, Air Quality Division, Arizona Department of Environmental Quality, to Michael Stoker, Regional Administrator, U.S. EPA, Region IX.

supplement to the commitment letter to resolve further deficiencies in the submitted rules.<sup>3</sup>

The EPA proposes to disapprove Rule 322 because it includes provisions that do not meet our evaluation criteria, and the deficiencies in the rule as submitted may cause a weakening from the current SIP-approved rule. These issues are summarized below and discussed further in our TSD evaluating Rule 322.

The EPA also proposes to conditionally approve Rules 323 and 324, because they strengthen the SIP. The County has committed to adopt specific enforceable measures to remedy the identified rule deficiencies in these rules, and the State has committed to submit those updated rules as SIP revisions. Our TSDs for Rules 323 and 324 provide further details on our evaluation for these conditional approvals.

*C. What are the deficiencies?*

1. Deficiencies in Rule 322

Rule 322's provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision for the following reasons.

- a. Rule 322 contains provisions that constitute unacceptable and unenforceable director's discretion. Specifically, the rule provides for the County's Air Pollution Control Officer to approve as RACT alternative control strategies that differ from the rule's existing emission limits or requirements without further approval from the EPA. This director's discretion conflicts with long-standing EPA policy. Although the County has committed to revise this provision, the EPA cannot conditionally approve Rule 322 because these

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<sup>3</sup> Letter dated December 5, 2019, from Philip A. McNeely, Director, Maricopa County Air Control Quality Department, to Doris Lo, Manager, Rules Office, Air and Radiation Division, U.S. EPA Region IX.

alternative control strategies may constitute a weakening of the SIP-approved rule.

- b. Rule 322's NO<sub>x</sub> emission limits are not demonstrated to meet RACT for steam generating units that are applicable to this rule. The County must revise the limits for these units or provide sufficient justification as to why these limits constitute RACT for these emission sources.
- c. Two provisions in Rule 322 exempt units from specific requirements when firing on emergency fuel. These exemptions are overly broad. First, unlike in other jurisdictions, the rule does not limit the duration in which emergency fuel can be used. Rule 322 must specify a maximum length of time that emergency fuel can be used per year. Second, the rule exempts units from all emission limits while testing operations for using emergency fuel. As written, the language could be interpreted to mean that any unit that test fires on emergency fuel would be exempt from all emission limits all of the time. The County must clarify that the exemption only applies during the testing period.
- d. The compliance schedule requirements for units that are currently not complying with the limits in the rule may be extended by the Control Officer as needed or could be extended by the County's inaction or delay to approve a compliance schedule. The County must include an enforceable deadline by which a facility must comply with the rule.
- e. Rule 322 currently does not include a compliance determination requirement, such as requiring regular stack tests or the use of continuous emission monitoring systems. The County must include enforceable compliance determination schedules to verify that facilities are complying with the emission limits in the rule.

Although the District and State provided commitment letters addressing some of the



listed deficiencies, the rule as submitted is not SIP-strengthening because deficiency (a) above could allow for a source to apply for an alternative control strategy that results in weakened emission limits or controls without the EPA's concurrent approval that this alternative is RACT. Although the existing SIP-approved version of Rule 322 contains less stringent limits and applies to fewer sources than the submitted version of Rule 322, this new provision could allow any existing source to apply to the County for an alternative RACT determination that may or may not be consistent with the existing or new NO<sub>x</sub> limits. Therefore the submitted Rule 322 is not appropriate for a conditional approval. Our TSD for Rule 322 contains our discussion and analysis for all the deficiencies and the County's commitments.

## 2. Deficiencies in Rule 323 and the County's and State's commitments

The provisions for Rule 323 do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision. However, the submitted rule strengthens the SIP and the County's and State's commitment letters include specific and enforceable commitments to address the deficiencies, which serve as the basis for today's proposed conditional approval. Our conditional approval of the SIP revision for Rule 323 is based on the following deficiencies and County and State commitments:

- a. Much like deficiency (c) for Rule 322, the emergency fuel use exemptions in the rule are overly broad. In Rule 323, the total allowable length of emergency fuel burning must be limited and must require that the facility owner/operator notify the County when switching to emergency fuel. The language in the rule exempting units firing emergency fuel for testing purposes could be interpreted to allow for the exemption during any operating period so long as there was a testing period. The County has committed to

clarify that the exemptions only apply during the testing period.

- b. All major sources of NO<sub>x</sub> must be subject to RACT limits or requirements. In Rule 323, all turbines and all boilers rated larger than 100 million British thermal units per hour (MMBtu/hr) must comply with emission limits in the rule. Boiler units rated between 10 MMBtu/hr and 100 MMBtu/hr may opt to comply with the emission limits or tune the units annually. The burner maintenance requirements in the rule's tuning requirements are not RACT, as many other jurisdictions regulating units in this size category are able to achieve numeric limits or have more stringent tuning requirements. As the rule is written, major source units in the nonattainment area are only required to tune the engine instead of complying with a RACT NO<sub>x</sub> limit. The County has committed to clarify that larger units shall comply with Rule 323 by meeting a NO<sub>x</sub> limit.
- c. Rule 323's NO<sub>x</sub> emission limits are not demonstrated to meet RACT for non-turbine combustion equipment that are applicable to this rule. The County has committed to revise the limits for these units or provide sufficient justification as to why these limits constitute RACT for these emission sources.
- d. The rule allows operators to comply with the limits in this rule by installing an emission control system but does not include any requirement to verify the effectiveness of that system in meeting the emission limits. The County has committed to revise the rule to make clear that any unit on which an emission control system is installed must comply with the numeric RACT limit.
- e. The operations and maintenance plan requirements for emissions control systems are only approved by the Control Officer. This constitutes unacceptable director's discretion.

The County has committed to codify additional requirements for acceptable operations and maintenance plans into the rule that would constrain the discretion of the director in approving or denying these plans.

- f. The Rule specifies that boilers larger than 100 MMBtu/hr must source test triennially but does not describe a testing frequency for other units. Other units must be tested at least triennially. The County has committed to require a minimum testing frequency for these units.
- g. The rule lacks a definition for “boiler,” and for “continuous emissions monitoring system.” The County has committed to include these definitions in the rule.

Our TSD for Rule 323 contains further discussion and analysis of these deficiencies and the County’s and State’s commitments.

### 3. Deficiencies in Rule 324 and the County’s and State’s commitments

The provisions for Rule 324 also do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP revision. The County’s and State’s commitment letters included specific and enforceable commitments to address these deficiencies. Our proposed conditional approval of the SIP revision for Rule 324 is based on the following deficiencies and the County’s and State’s commitments to correct them:

- a. The current structure of rule applicability and emission limits does not clearly outline a RACT limit for NO<sub>x</sub> and VOC emissions from all applicable internal combustion (IC) engines. The County must include control requirements or limits for engines otherwise subject to federal requirements and standards in 40 CFR part 60, subparts IIII and JJJJ. The Clean Air Act requires that RACT limitations be approved into the federally-

enforceable SIP. It is inappropriate to rely on requirements outside of the SIP, such as the Standards of Performance for New Stationary Sources found in 40 CFR part 60. The County has committed to include applicable numeric limits or other requirements directly in the rule language.

- b. The current rule only applies to engines rated greater than 250 brake horsepower (bhp), and to engines rated greater than 50 bhp or greater when operating at a facility whose units sum to more than 250 bhp. The County should lower the applicability threshold for all engines to 50 bhp to be in line with other jurisdictions' RACT rules. The current rule also does not clearly state compliance requirements for 50 bhp engines summed at a 250 bhp facility. The County has committed to lower the applicability threshold and to clarify requirements for those smaller engines.
- c. The current rule allows for unacceptable flexibility in the treatment of replacement engines and emergency engines. Emergency engines that serve as backup to replace non-emergency engines may do so until the non-emergency engine is repaired, but this time span is otherwise unbounded, and the emergency engines may operate above RACT limits. Current rule provisions also allow for engines that are deemed equivalent or identical to replace existing engines and then be treated the same as the engine being replaced; but there are no requirements for replacement engines to quantify emissions equivalency or reductions. The County has committed to limit the total amount of time that these types of emergency engines can operate, to modify the definitions of "emergency engine" and "identical replacement engine," and to remove the definition for "equivalent replacement engine."

- d. The current rule does not specify a compliance determination interval for engines, other than at the Control Officer's discretion. The County has committed to require compliance determination performance tests every two years for non-emergency engines located at major sources. The County has also committed to require compliance determination requirements for certified non-emergency engines and for non-emergency engines.

Our TSD for Rule 324 contains further discussion and analysis of these deficiencies and the County's and State's commitments.

*D. EPA recommendations to further improve the rules*

The TSDs for Rules 322, 323, and 324 also describe additional rule revisions that we recommend for the next time the County modifies the rules that do not constitute approvability issues at this time.

*E. Proposed action and public comment*

As authorized in section 110(k)(3) of the Act, we are proposing full disapproval of the submitted MCAQD Rule 322. If the disapproval for Rule 322 is finalized, this action would trigger the 2-year clock for the federal implementation plan (FIP) requirement under CAA section 110(c)(1). Final disapproval would also trigger sanctions under CAA section 179(a)(2) and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action.

In addition, section 110(k)(4) authorizes the EPA to conditionally approve SIP revisions based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan's conditional approval. 42 U.S.C. 7410(k)(4). In this instance, the enforceable measures that the State must submit are new or revised rules that

correct the rule deficiencies identified above for MCAQD Rules 323 and 324. As noted above, the County transmitted letters on January 28, 2019, and December 5, 2019, committing to adopt revisions that would address the deficiencies identified in Rules 323 and 324. Accordingly, we are proposing to conditionally approve Rules 323 and 324. If these proposed conditional approvals are finalized as proposed, and the County or the State fails to comply with these commitments for either rule, the conditional approval for that rule would convert to a disapproval and start an 18-month clock for sanctions under CAA section 179(a)(2) and a two year clock for a FIP under CAA section 110(c)(1).

Note that the submitted rules have been adopted by the MCAQD, and the EPA's final conditional approvals and full disapproval would not prevent the County from enforcing them. The conditional approvals also would not prevent any portion of rules 323 and 324 from being incorporated by reference into the federally enforceable SIP as discussed in a Memorandum dated July 9, 1992, from John Calcagni, Director, Air Quality Management Division, U.S. EPA to EPA Regional Air Directors, Regions I-X, Subject: "Processing of State Implementation Plan (SIP) Submittals," found at: <https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

We will accept comments from the public on the proposed disapproval and conditional approvals for the next 30 days.

### **III. Incorporation by Reference**

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference MCAQD Rule 323, "Fuel Burning Equipment

from Industrial/Commercial/Institutional (ICI) Sources,” as revised on November 2, 2016, and MCAQD Rule 324 “Stationary Reciprocating Internal Combustion Engines (RICE),” as revised on November 2, 2016. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

##### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:*

###### *Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

##### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because actions such as SIP approvals are exempted under Executive Order 12866.

##### *C. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA, because this proposed SIP disapproval and conditional approval, if finalized, will not in-and-of itself create any new information collection burdens, but will simply disapprove or conditionally approve certain State requirements for inclusion in the SIP.

##### *D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed SIP disapproval and conditional approval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove or conditionally approve certain State requirements for inclusion in the SIP.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to disapprove or conditionally approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revisions that the EPA is proposing to disapprove or conditionally approve would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.



*H. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because this proposed SIP disapproval and conditional approval, if finalized, will not in-and-of itself create any new regulations, but will simply disapprove or conditionally approve certain State requirements for inclusion in the SIP.

*I. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: December 16, 2019.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

[FR Doc. 2019-27843 Filed: 12/27/2019 8:45 am; Publication Date: 12/30/2019]